92-1601

No. 92-1683

In The
Supreme Court of the United States
October Term, 1992

UNITED STATES OF AMERICA,
EX REL. ROLAND A. LEBLANC,

Petitioner,

v.

RAYTHEON COMPANY, INC.,

Respondent

Petition For Writ of Certiorari To The United States Courts of Appeals For The First Circuit

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QUESTIONS PRESENTED

1. Did the Massachusetts courts properly dismiss this action (and its predecessor), or should the dismissals be vacated?

2. Must or should the Massachusetts courts take jurisdiction of this action (and its predecessor)?

3. If the Massachusetts courts lack jurisdiction, must or should they transfer this action (and its predecessor) back to Florida?

*Petitioner's counsel has timely applied for admission to the Bar of this Court.

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OPINIONS BELOW

1. *United States ex rel. LeBlanc v. Raytheon Co., Inc.*, 729 F. Supp. 170 (D. Mass.) (February 6, 1990) ("LeBlanc I"). Dismissed without prejudice at Plaintiff's request for lack of subject matter jurisdiction. Appendices A-D.

2. *Id.*, 913 F.2d 17 (1st Cir.) (September 4, 1990). Dismissal affirmed, on other grounds. Appendix E.

3. 111 S. Ct. 1312 (1991). Cert. denied, March 18, 1991.

4. 112 S. Ct. 17 (1991), rehearing denied, August 2, 1991.

5. *United States ex rel. LeBlanc v. Raytheon Co., Inc.* ("LeBlanc II"), United States District Court for the Middle District of Florida, Orlando Division. Granted jurisdiction; transferred to Massachusetts. Appendices F-G.

6. *Id.*, United States District Court

for the District of Massachusetts (May 15, 1992). Appendix H.

7. *Id.*, Order of Dismissal (May 18, 1992). Appendix I.

8. United States Court of Appeals (1st Cir.)(December 29, 1992). Appendix J.

JURISDICTION

Petitioner commenced this action in Florida for the United States under the False Claims Act, 31 U.S.C. § 3730(b)(1). He alleged that Raytheon has perpetrated massive fraud upon the United Stated in violation of 31 U.S.C. § 3729. Subject matter jurisdiction lies under 31 U.S.C. § 3732 and 28 U.S.C. § 1331.

Jurisdiction and venue were initially obtained in Florida where Raytheon maintains a facility. In its motion to transfer, Raytheon stipulated to jurisdiction in Massachusetts.

Appellate jurisdiction on appealwas based upon 28 U.S.C. § 1294.

That Court entered judgment on December 29, 1992. This Court's jurisdiction is invoked under 28 U.S.C. §§ 1331, 1355 and 3730(b)(1).

STATUTORY PROVISIONS INVOLVED

28 U.S.C. § 1404. Change of venue

(a) For the convenience of parties and witnesses, **in the interest of justice**, a district court **may transfer any civil action** to **any other district or division where it might have been brought.**

28 U.S.C. § 1631. **Transfer to cure want of jurisdiction**

Whenever a civil action is filed in a court ... and that **court finds** that there is a **want of jurisdiction, the court shall, if it is in the interest of justice, transfer such action or appeal to any other such court in which the action or appeal could have been brought** at the time it was filed or noticed, and the action or appeal shall proceed as if it had been filed in or noticed for the court to which it is transferred on the date upon which it was actually filed in or noticed for the court from which it is transferred.

The False Claims Act, 31 U.S.C. § 3730, provides in relevant part:

(b)(1) **A person** may bring a civil action for a violation of section 3729 **for the person** and for the United States Government. The action shall be brought in the name of the Government.

The action may be dismissed only if the court and the Attorney General

give written consent to the dismissal and their reasons for consenting. (e) Certain actions barred. --
(1) **No court shall have jurisdiction** over an action brought **by a** former or present **member of the armed forces** under subsection (b) of this section **against a member of the armed forces** arising out of such person's service in the armed forces.

(4)(A) **No court shall have jurisdiction** over an action under this section based upon the public disclosure of allegations or transactions **in a criminal, civil, or administrative hearing, in a congressional, administrative, or Government Accounting Office report, hearing, audit, or investigation, or from the news media**, unless the action is brought by the Attorney General or **the person** bringing the action **is an original source of the information.**

(B) ... "original source" means **an individual** who has **direct and independent knowledge** of the information on which the allegations are based **and has voluntarily provided the information to the Government** before filing an action under this section which is based on the information.

Fed. R. Civ. P. Rule 12(b) [T]he following defenses may at the option of the pleader be made by motion: ... (6) failure to state a claim upon which relief can be granted ....

If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

Fed. R. Civ. P. Rule 56(c) **Motion** and Proceedings Thereon. **The motion shall be served** at least **10 days before the time fixed** for **the hearing.** The adverse party **prior to the day of hearing may serve opposing affidavits....** the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, **shall if practicable ascertain what material facts exist** without substantial controversy and what material facts are actually and in good faith controverted.

Fed. R. Civ. P. Rule 54(b) Judgment Upon Multiple Claims or Involving Multiple Parties. When ... multiple parties are involved, the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon ... an express direction for the entry of judgment. In the absence of such determination and direction, **any order or other form of decision, however designated, which adjudicates**

fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties, and **the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.**

(emphasis added)

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F.R.C.P. Rule 7(b)(1).....22

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STATEMENT OF THE CASE

A. The Facts

Petitioner Roland LeBlanc worked in 1986 and 1987 for the United States Government, Defense Contract Administration Services ("DCAS"). As a Quality Assurance Specialist at Raytheon's Waltham, Massachusetts plant, during and after work hours, he discovered and investigated pervasive and massive military contract fraud.

LeBlanc alleges that Raytheon: sold nonconforming products, including a high percentage of inadequate Class A (critical) welds, many now on use in navy vessels; used nonconforming materials and methods (e.g., instead of required high temperature baking, spray painting equipment on the way out the door); failed to test properly or at all, faked test results and falsified records; did

unauthorized repairs (e.g., realigning metal with torches, weakening it); billed for products never ordered; and billed for huge quantities of product which was never delivered but simply disappeared from the plant.

Mr. LeBlanc disclosed his findings to his superiors, who told him to keep quiet, and covered the matter up. When Mr. LeBlanc disclosed his findings to more senior officials, within hours he was summarily fired. Documentation shows that Raytheon played a role in the termination.

B. *LeBlanc I* (Massachusetts)

Seeing the Government take no action, Mr. LeBlanc brought suit for himself and on behalf of the United States under the False Claims Act in Massachusetts ("LeBlanc I"). The Complaint alleges many frauds with the required particularity, and supporting exhibits are attached.

Your Petitioner believes his False Claims Act case is the largest ever brought in the history of the country, **involving the potential recovery of billions of dollars** (excluding treble damages). The Justice Department told him and undersigned counsel that it knows the claims have merit.

Nonetheless the Government declined to intervene. At the time, it opposed all False Claims Act suits brought by its employees, notwithstanding that 1986 amendments to the False Claims Act, **removed a bar to claims by Government employees.** One perceptive court stated,

> "The United States has neither case law nor legislative history to support its extraordinary reading of a remarkably explicit jurisdictional statute. The United States takes its position in surprise and chagrin at the 1986 amendments" but should direct its complaints to Congress.

U.S. ex rel. Hagood, 929 F.2d 1416 (9th Cir. 1991). Without right, United States

attorneys wrote a lengthy brief contending that as a former Government employee Mr. LeBlanc lacked jurisdiction. (Having declined to intervene under 31 U.S.C. § 3730(b)(4)(B), the Government was barred from submitting the brief, and the Court should have disregarded it). The Justice Department made like arguments in other qui tam cases, applying Byzantine logic that most courts readily perceived to contradict the statute's limited jurisdictional exceptions. (While arguing that courts lacked jurisdiction, the Justice Department took the contrary position in a letter to then-Vice President Quayle, requesting that the law be changed retroactively to block like LeBlanc's from proceeding around the country).

The District Court adopted the Government's arguments that LeBlanc lacked

subject matter jurisdiction in dicta, but allowed LeBlanc to serve Raytheon, thereby acknowledging jurisdiction. Appendices A-B. It then amended its order, however, to dismiss, **without prejudice**, for lack of jurisdiction. Appendices C-D. The court did not comply with statutory requirements for dismissal; failed to adjudicate the rights of both LeBlanc and the United States; and did not consider transferring the action elsewhere.

The Court of Appeals affirmed on more limited jurisdictional grounds, and *certiorari* was denied. Appendix E.

C. *LeBlanc II* (Florida)

The Eleventh Circuit in *U.S. Ex Rel. Williams v. NEC Corp., 931 F.2d 1493 (11th Cir. 1991)*, expressly stated that the Massachusetts courts improperly denied jurisdiction over Mr. LeBlanc's case. As was his right, *see infra*, LeBlanc filed a

second suit in Orlando, Florida, where Raytheon has a plant. The second action incorporates the first but alleges many more and many new counts of fraud. Mr. LeBlanc spent a great deal of time as a private citizen investigating and preparing these additional claims.

The Florida Court acknowledged jurisdiction and authorized LeBlanc to serve Raytheon. See Appendix F. Raytheon moved to dismiss under F.R.C.P.12(b)(6) **or alternatively** to transfer to Massachusetts for reasons of convenience. **Raytheon stipulated to the District Court Judge to the existence of jurisdiction in Massachusetts.** She declined to rule on the 12(b)(6) motion but allowed the alternative motion to transfer to Massachusetts, over Petitioner's objection, for *forum non conveniens*. Appendix G. The Court did not ascertain

that jurisdiction would lie in the transferee state. Mr. LeBlanc sought rehearing immediately but was told the file was gone, barring appeal under Florida rules.

D. *LeBlanc II* (Massachusetts)

Upon arrival, Raytheon filed a **"Motion for Status Conference"** "to address the procedural posture of this case" and "to determine the most efficient manner in which to proceed". No hearing date was set and LeBlanc had no notice of any pending motion except that one. Three days later, without a hearing (at least on LeBlanc's part), Judge Tauro gave notice that he had allowed a Rule 12(b)(6) motion to dismiss (failure to state a claim). Appendices H-I. Dismissal was in fact on grounds of *res judicata* and collateral estoppel as to lack of jurisdiction in Massachusetts.

In his opinion, the judge confessed to being overwhelmed and confused by the number of counts and references to military specifications violated (which are central to the case). He did not carefully compare the claims in the two suits, disregarded LeBlanc's allegations as to the personal time spent preparing *LeBlanc II*, and did not analyze the jurisdictional consequences. He said he was bound by the prior decision despite contrary decisions elsewhere.

As before, the District Court did not obtain the Attorney General's consent, adjudicate the Government's rights, or consider transfer back to Florida from whence if had come solely for convenience of the parties only three days before.

The First Circuit affirmed on the same grounds in a short opinion, Appendix J, giving rising to this appeal.

REASONS FOR GRANTING THE WRIT

Intervention by this Court is urgently required and warranted. (1) The claim of multibillion dollar fraud against the United States is one of great national importance and Congress has legislated that it wants such claims prosecuted, not ignored. (2) The circuits are in conflict in general and within this very case on an important question of federal jurisdiction under the False Claims Act. (3) The courts have "so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by lower courts, as to call for an exercise of this Court's power of supervision." (S.Ct. Rule 10.1(a)). (4) Moreover, this dispute, involving two actions in two states, can be easily and quickly resolved or resolved at all only by recourse to the Supreme Court.

On any analysis LeBlanc may prosecute his second action. Jurisdiction has already been found to lie in Florida. He may proceed there unless the Massachusetts courts take jurisdiction, as they should do. See Section I.

The dismissal of *LeBlanc II* as *res judicata* also brings *LeBlanc I* properly before this Court. Both cases were improperly dismissed and should be reinstated. See Section II. Petitioner should be permitted to proceed with both cases in Massachusetts. See Section III.

I. PETITIONER HAS A RIGHT TO PROCEED IN FLORIDA, WHERE JURISDICTION HAS BEEN FOUND TO LIE, IF MASSACHUSETTS COURTS INDEED LACK JURISDICTION

Even assuming in this Section I that Petitioner lacks jurisdiction in Massachusetts, he may prosecute this second action (and its predecessor) in Florida.

A. Jurisdiction Lies in Florida

The decision by a court of one state, here Massachusetts, that it lacks jurisdiction, has no effect on the existence of jurisdiction in another state. LeBlanc had every right to take his claims to a state where they would be heard. It was not "forum shopping" but common sense to go to a court that would hear his claims.

The District Court for the District of Massachusetts dismissed *LeBlanc I and II* on grounds of lack of subject matter jurisdiction in Massachusetts. Not being expressly "with prejudice", both dismissals were without prejudice. F.R.C.P. Rule 41(b). A case dismissed without prejudice may be brought at any time in the same state or any other. A case dismissed without prejudice **for lack of jurisdiction in Massachusetts** cannot

under any circumstances bar a like suit in a different state. Jurisdictional decisions in one state, here Massachusetts, bind no other.

The foregoing needs no arguing because the Florida District court took jurisdiction and allowed LeBlanc to serve Raytheon. The case was transferred only for *forum non conveniens*. The prior and subsequent jurisdictional decisions in Massachusetts have no bearing whatsoever on the jurisdiction the Florida court exercised in *LeBlanc II*.

B. Massachusetts Courts Abused Their Discretion By Failing to Transfer the Cases to Florida On Their Own Initiative

The Florida Court transferred *LeBlanc II* to Massachusetts **to be heard on the merits** in the most convenient forum, not to be declared dead upon arrival. If the case cannot be heard, obviously it must be returned.

By statute, wherever either case began, the Massachusetts courts should (if they lack jurisdiction) on their own initiative transfer them to Florida. 28 U.S.C. § 1631:

> "[If a] court finds that there is a want of jurisdiction, the court **shall, if it is in the interest of justice, transfer such action ... to any other such court in which the action ... could have been brought"**

(emphasis added). The statute is obligatory. The Massachusetts courts erred by the complete failure to consider transfer, and to transfer in the interest of justice. This is so even barring a request for transfer. See, e.g., *Miller v. Hambrick*, 905 F.2d 259 (9th Cir. 1990):

> 28 U.S.C. § 1631 ... 'serves to "aid litigants who were confused about the proper forum for review."' [N]ormally dismissal of an action that could be brought elsewhere is 'time consuming and justice-defeating'. ... Although Miller did not move the district court to transfer the case, we have held that '[a] motion to transfer is unnecessary because of the mandatory

cast of section 1631's instructions.'...We review a district court's refusal to transfer a case under 1631 for an abuse of discretion. **A district court's failure to exercise discretion constitutes an abuse of discretion. Here, the district court abused it discretion in failing to determine whether the action could have been brought** [elsewhere] and whether transfer would have been in the interest of justice....Accordingly **we reverse the district court's dismissal of Miller's petition and remain the case to the district court with directions to transfer the petition to the District Court for the Norther District of Texas."**

C. Florida Must Hear *LeBlanc II* If It Cannot Be Brought in Massachusetts

The result would be the same even if Massachusetts courts properly denied jurisdiction and had no obligation to transfer to a state that does. In that

event, the Florida Court improperly transferred *LeBlanc II* to Massachusetts.

Pursuant to 28 U.S.C. § 1404(a), "For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought." A court has the power to transfer only if the plaintiff has **an unqualified right to bring the actions in the transferee forum at the time of commencement of the actions".** *Phillips Petroleum Co. v. FEA*, D.C. Del. 1977, 435 F. Supp. 1234. A district where plaintiff's action "might have been brought" within subsection (a) authorizing transfer **is one where subject matter jurisdiction is present.** *McLoutn Steer Corp. v. Jewell Coal & Coke Co., Inc.*, D.D. Tenn. 1976, 432 F. Supp. 10.

The Appeals Court has only recently

affirmed the ruling that Massachusetts courts have no jurisdiction to hear *LeBlanc II*. Barring reversal by the Supreme Court, or relief from judgment under F.R.C.P. Rule 60 in the Massachusetts courts, it will have been determined that transfer to Massachusetts was improper, requiring transfer back to Florida.

II. BOTH ACTIONS WERE IMPROPERLY DISMISSED, FOR MANY REASONS, AND THEY SHOULD BE REINSTATED

A. The Statutory Prerequisites to Dismissal Were Ignored

The False Claims Act, 31 U.S.C. § 3730(b)(1) prohibits dismissal without the written consent of the Attorney General with reasons for consenting. The statutory prerequisite was not met in either action. The Justice Department had even reminded the District Court in *LeBlanc I* of this obligation in its Notice of Declination of Appearance on April 21,

1989:

> Although the United States has declined to enter its appearance in this action, the Court is respectfully referred to 31 U.S.C. § 3730(b)(1), which provides that the relator may carry on the action in the name of the United States, but that the '**action may be dismissed only if the court and the Attorney General give written consent to the dismissal and their reasons for consenting.**' Therefore, the United States respectfully requests that the Court solicit the consent of the United States ... **before ruling on any proposal, either by the relator or the defendant, to dismiss, settle, or otherwise discontinue the action.**

Moreover, every dismissal by Massachusetts courts has been invalid for violation of F.R.C.P. 54(b). This Rule, in brief, provides that where multiple parties are involved, here Mr. LeBlanc and the United States, a court may not enter a final order as to one but fewer than all of the claims and parties.

> **"[A]ny order or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not**

> **terminate the action as to any of the claims or parties**, and **the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.**

Accordingly, both Massachusetts cases have been improperly dismissed, the dismissals are void and a nullity, LeBlanc's rights have not been finally determined, and this Court should reinstate both actions.

B. Numerous and Gross Procedural Errors and Misrepresentations Render the Dismissal Void

In addition, there have been numerous and flagrant procedural errors and abnormalities, and Raytheon made misrepresentations, which have extremely prejudiced the Petitioner and require reversal.

1. Raytheon Procured Transfer from Florida by Falsely Consenting to Jurisdiction in Massachusetts. Upon Transfer, It Brazenly Argued the Opposite

For example, Raytheon stipulated in

Florida to the existence of jurisdiction in Massachusetts. In its motion to dismiss or alternatively to transfer, filed March 3, 1992, Raytheon stated,

> "Transfer pursuant to section 1401(a) also **requires a determination that the case might have been brought in the transferee district.** Garay, 755 F. Supp. at 1011. This requirement is satisfied if: "(1) **the court had jurisdiction over the subject matter of the action;** (2) venue is proper there; and (3) the **defendant is amenable to process issuing out of the transferee court."** Windmere, 617 F. Supp. at 10, citing 15 Wright, Miller & Cooper, Federal Practice and Procedure § 3845 (1976). **Each of these elements is present here.** first, **the District of Massachusetts had federal question jurisdiction over the federal False Claims Act claims.** Second venue was proper [in Massachusetts]. Third, **Raytheon is amenable to process in the District of Massachusetts."**

Quite simply, Raytheon procured the transfer from Florida by fraud. Accordingly, this Court should nullify the transfer unless jurisdiction is found in Massachusetts.

Upon transfer Raytheon defrauded the

Massachusetts courts. Raytheon failed to disclose in Massachusetts its amenability to process. Moreover, in requesting a status conference Raytheon suggested *sub silentio* the very opposite (which was also untrue), the "pendency" of a motion to dismiss.

2. No Motion to Dismiss Could Have Been Decided Because None Was Pending

As stated, on May 11, 1992 Raytheon filed a "Motion for Status Conference". The document repeatedly requests only **the scheduling of a status conference**, to address the procedural posture of the recently transferred case and "to determine the most efficient manner in which to proceed". Undeniably, the motion is a request for conference and not more. It does allege "the pendency of Raytheon's Motion to Dismiss and the fact that this action is related to the prior lawsuit resolved by Judge Tauro", but again, in

the context of a request to schedule a conference to determine how to proceed.

Astoundingly, a scant four days later the District Court allowed Raytheon's purported Motion to Dismiss under Rule 12(b)(6). This was clear error.

First, Raytheon had moved for a status conference only, notwithstanding the reference to a pending motion.

Second, in no event was any Motion to Dismiss pending. The only such motion had been the motion in Florida to dismiss **or in the alternative to transfer**. The alternative had been granted, leaving no motion pending, even in Florida.

Third, not only was the Motion to Dismiss filed in Florida, but it concerned the jurisdictional status of the case in Florida, not in Massachusetts. Notice and an opportunity to be heard on the Florida motion would not constitute sufficient

notice and opportunity to defend a like motion in Massachusetts, applying Massachusetts law.

Fourth, no motion could have been effective in Massachusetts without the required filing, notice, time to respond, and hearing date. See, e.g., F.R.C.P. Rule 7(b)(1):

> "An application to the court for an order shall be by motion which ... shall be made in writing, shall state with particularity the grounds therefor, and shall set forth the relief sought... (3) All motions shall be signed in accordance with Rule 11." Local Rule 5(a), Massachusetts Rules of Court: [E]very ... written motion [unless ex parte] and similar paper shall be served upon each of the parties. F.R.C.P. Rule 6(d): "A written motion ... and notice of the hearing thereof shall be served not later than 5 days before the time specified for the hearing ... When a motion is supported by affidavit, the affidavit shall be served with the motion."

The Florida motion, had it been before the Massachusetts court, was a motion to dismiss under Rule 12(b)(6)

(failure to state a claim). If ever a right to relief was stated on the face of a False Claims Act complaint, it was in *LeBlanc II*.

Notwithstanding that the motion (assuming that it was before the court) was under Rule 12(b)(6), failure to state claim, the judge dismissed the case on grounds of *res judicata* and collateral estoppel. Such grounds were not properly raised or noticed by a Rule 12(b)(6) motion for failure to state a claim.

C. The Dismissal Denied LeBlanc's Constitutional Right to Due Process

LeBlanc had no reason to believe that any motion was properly pending against him in the United States District Court except the one that was pending, namely Raytheon's Motion for a Status Conference, containing a request to confer and consider how to proceed. He received no notice of a motion to dismiss under Rule

12(b)(6) in Massachusetts. Even had he it would not have constituted notice to defend against a challenge on grounds of *res judicata* and collateral estoppel. He was denied due process and an opportunity to defend, and dismissal should be reversed.

III. RES JUDICATA AND COLLATERAL ESTOPPEL DO NOT BAR PROSECUTION IN MASSACHUSETTS. THE FALSE CLAIMS ACT, THE PUBLIC INTEREST, JUSTICE AND CONVENIENCE REQUIRE THAT PETITIONER'S CLAIMS OF MASSIVE FRAUD AGAINST THE GOVERNMENT BE TRIED, IN MASSACHUSETTS

Ignoring every statutory, procedural, constitutional and ethical consideration raised above, was Judge Mazzone compelled as he thought to find jurisdiction precluded in *LeBlanc II* by reason of that finding in *LeBlanc I*? The facts and law suggest otherwise.

A. *Res Judicata* and Collateral Estoppel Can Not Apply to the Many New Claims of Fraud in *LeBlanc II*

Issue preclusion arises in a second

action on the basis of a prior decision only when the same issue is involved in both actions and the issue was actually litigated in the first, after a full and fair opportunity to litigate. 18 Wright, Miller & Cooper, § 4415 at 136. All claims in Mr. LeBlanc's first action are included in the second. However the second contains more new allegations of fraud than repetitions from the first action. The first Complaint, for example, had twenty-five claims while the second has ninety-two. The False Claims Act specifies that each false claim gives rise to a separate cause of action and right of recovery, including penalties. The preponderance of new claims requires a fresh and thorough jurisdictional analysis.

Further, a key consideration in the First Circuit's conclusion that he lacked

jurisdiction in *LeBlanc I* was that "[i]t was LeBlanc's responsibility, a condition of his employment, to uncover fraud. The fruits of his effort belong to his employer - the government."

As a legal matter, the False Claims Act contains no bar to recovery by a government employee obliged to uncover fraud. As a factual matter, it was not Mr. LeBlanc's responsibility to uncover fraud. He was, simply, a Quality Assurance Specialist. The first action clearly should not have been barred.

But even considering that it was, **those consideration do not apply to the second action.** Mr. LeBlanc had **no responsibility whatsoever** to devote countless hours of his personal time to uncover anything on behalf of the Government. He has a right to prosecute and share in the recovery from those

extraordinary private efforts.

B. Massachusetts Courts Cannot Violate the Clear Statutory Directive to Hear These Fraud Claims; Contrary Decisions Have No Preclusive Effect

Only valid decisions can have preclusive effect. 18 Wright, Miller & Cooper, Federal Practice & Procedure § 4415 at 136. Other circuits have expressly stated that Mr. LeBlanc had a right under the clear wording of the False Claims Act to proceed in Massachusetts. The District Court did not merely mistakenly interpret the law in *LeBlanc I*, but failed to follow clear statutory directives. Thus, the denial of jurisdiction in *LeBlanc I* was void and a nullity and without preclusive effect. To reach the same decision a second time would be to disregard the statute again and compound the error. It would be particularly egregious in light of decisions saying *LeBlanc I* ignored clear

statutory authority.

It would also be highly discriminatory. Mr. LeBlanc knows of no other government employee whose False Claims Act has ever been barred, and his is certainly among the most deserving.

The analysis is simple as set forth in *U.S. ex rel. Williams, supra*. *Williams* notes that 1943 amendments barred government employees from bringing suit. In 1986 to encourage qui tam suits, Congress **eliminated** the language prohibiting suit based on information possessed by the government. Instead it granted any private "person" the right to bring a civil action, subject to four specific and limited exceptions.

The District Court's ruling in the first action that government employees could never bring suit was clearly wrong. They do not fall within the enumerated

exceptions of § 3730(e). Moreover, § 3730(e)(1) bars certain government employees from certain qui tam suits, making clear that such employees may generally proceed.

The District Court also found that there had been "public disclosure" of allegations under § 3730(e)(4)(A), disclosure by LeBlanc-as-government-employee to LeBlanc-as-private-citizen.

The First Circuit said this "cannot be" and held that there was no "public disclosure". Subsection (4)(A) states, **"No court shall have jurisdiction .. based upon the public disclosure of allegations** [in limited enumerated circumstances']." At that moment, the First Circuit was obliged to acknowledge jurisdiction. See *Williams*:

> **"[W]e explicitly reject the reasoning of the First Circuit in [LeBlanc I]."** "In our view the *Raytheon* court **went one step too far** [i.e., beyond its

> authority]. Once it found no 'public disclosure,' its inquiry should have ended and **jurisdiction should have been acknowledged.** The application of the 'original source' exception to the jurisdictional bar in order to defeat jurisdiction that already existed, **was improper."**

(Even had there been public disclosure, LeBlanc as an original source qualified for the exception).

C. The Massachusetts Courts Were Not Bound by *Res Judicata* and Collateral Estoppel. They Should Have Considered The Uniformity of Other Circuits on this Pure Question of Statutory Law; Congress's Intent and the Public's Need to Combat Fraud; Fairness; the Fact That Raytheon Was Never Even Served; and Convenience

Judge Mazzone in *LeBlanc II* found the prior ruling binding on the court despite any contrary decisions by [many] other circuits. (P. 5, citing 18 Wright, Miller & Cooper, Federal Practice and Procedure §4415 at 130 (1981)). But as stated, a void ruling has no preclusive effect. Moreover, numerous exceptions to preclusion directly apply here.

United States ex rel. Stinson v. Blue Cross, 755 F. Supp. 1040 (S.D.Ga. 1990), concerned the same False Claims Act provisions as *LeBlanc*. Defendant contended jurisdiction was barred in Georgia because plaintiff failed to obtain subject matter jurisdiction on the same claim against a similar defendant in New Jersey. The court found otherwise. It said that issue preclusion is less favored in pure questions of law than with mixed questions of law and fact. Further, **"Issue preclusion is least favored where the pure question of law is one of statutory construction"**. *Id.* at 1046. "[T]he court will not estop the plaintiff from invoking the subject-matter jurisdiction of this Court ... [T]he issue urged to be precluded" -- subject matter jurisdiction under the same Section 3730(e)(4) as in *LeBlanc* -- "is a pristine

question of law". *Id.*

> Further, "[e]ven if preclusion is generally accepted for identical issues of law application, **changes in the surrounding legal climate may often defeat preclusion ...** Similar changes may result from **decisional developments.**" Moreover, "[s]o long as there has been sufficient change to suggest that a new issue of law application is presented, preclusion should be defeated unless there are compelling concerns of repose or reliance." Wright & Miller, *supra*, § 4425 at 259-61. This is all the more so when decisional changes in the legal climate are "clear and sharp .... Development of the law in factually related cases may have the same effect. **Mere general growth of a body of law may defeat preclusion.**" *Id.* at 262. **"[T]he second court should be freed from the prior determination if there has been some marked advance or alteration in relevant orientation, approach, reasoning or principles."** *Id.* at 262, citing CBN Corp. v. United States, 364 F.2d 393, 395-98.

Other important concerns must be but were not considered in LeBlanc's case:

> "[I]nconsistent rulings may defeat preclusion on issues of law application because of **special needs to achieve nondiscriminatory treatment.** Subtler changes may justify relitigation in other areas, ... because of competing or **even**

> **greater concerns of public interest ... broad public interests may ease the way to reconsideration ... special needs** [may be] **presented by specific areas of law ....**" *Id.* at 262-63.

Congress identified fraud against the government as a matter of great national importance. Congress acknowledged a compelling need to encourage citizens to root out fraud.

Preclusion also "should not be exercised in such manner as to work an injustice." *Id.* at 264-65. Justice is something Mr. LeBlanc has yet to see. A further injustice will be done if only his second suit is reinstated, because he might thereby be denied the right to prosecute two years of fraud claims.

Raytheon should be estopped from asserting preclusion because of its misrepresentations to the courts.

Finally, the Court is reminded that *LeBlanc I* was voluntarily dismissed,

without prejudice, and Raytheon was never a party, whereas preclusion applies only to parties.

> [A] substantial change in the applicable legal context may warrant relitigation of jurisdictional issues ... **This principle is clearly sound as to relitigation of the same issue with respect to the same claim if the first action was dismissed for want of jurisdiction.**

Wright & Miller § 4428 at 278, citing Restatement 2d of Judgments (1981) § 12 & com. c.

Considerations of repose for military giant Raytheon by reason of "prior litigation", when the parties were never joined in *LeBlanc I* are non-existent.

Had the District Court properly weighed and applied these standards, it would have been compelled to conclude that jurisdiction was clearly appropriate in Massachusetts despite the earlier, contrary ruling.

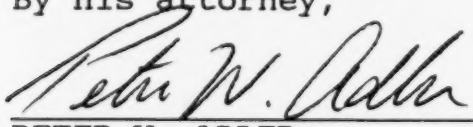
CONCLUSION

WHEREFORE your Petitioner respectfully prays that this Supreme Court vacate the dismissals of *LeBlanc I and II* in Massachusetts; direct that jurisdiction lies in Massachusetts and Petitioner may prosecute both actions there, as it is the most convenient forum; otherwise, order both cases transferred to Florida for prosecution.

Respectfully submitted,

ROLAND A. LEBLANC

By his attorney,



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